

APR 20 2006

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LEOBARDO BUSTAMANTE JIMENEZ;
et al.,

Petitioners,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-72755

Agency Nos. A95-313-180
A95-313-181
A95-313-182

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted April 13, 2006^{**}

Before: SILVERMAN, McKEOWN, and PAEZ, Circuit Judges.

Leobardo Bustamante Jimenez, his wife Margarita Rios Reynoso, and their son Jorge Bustamante Rios, natives and citizens of Mexico, petition for review of

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

the Board of Immigration Appeals' summary affirmance without opinion of an immigration judge's pretermission of their applications for cancellation of removal. We have jurisdiction pursuant to 8 U.S.C. § 1252. We deny the petition for review.

Substantial evidence supports the agency's determination that petitioners failed to established the requisite ten years of continuous physical presence because they conceded through counsel that they left the United States for a period of more than ninety days between May 1992 and August 1992, and the Notice to Appear was issued in May of 2002. *See* 8 U.S.C. § 1229b(b)(1)(A) and (d)(2) (stating that a departure of more than ninety days breaks the accrual of continuous physical presence and requiring ten years of continuous physical presence immediately preceding issuance of the Notice to Appear).

We reject petitioners' contention that the IJ deprived them of due process by failing to develop the record concerning their 1992 departure. *See Sanchez-Cruz v. INS*, 255 F.3d 775, 779 (9th Cir. 2001) (requiring prejudice to establish a due process violation during immigration proceedings).

PETITION FOR REVIEW DENIED.